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EXHIBIT 3

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

IN RE: FLINT WATER CASES Case No. 5:16-cv-10444-JEL-MKM

Hon. Judith E. Levy, District Judge

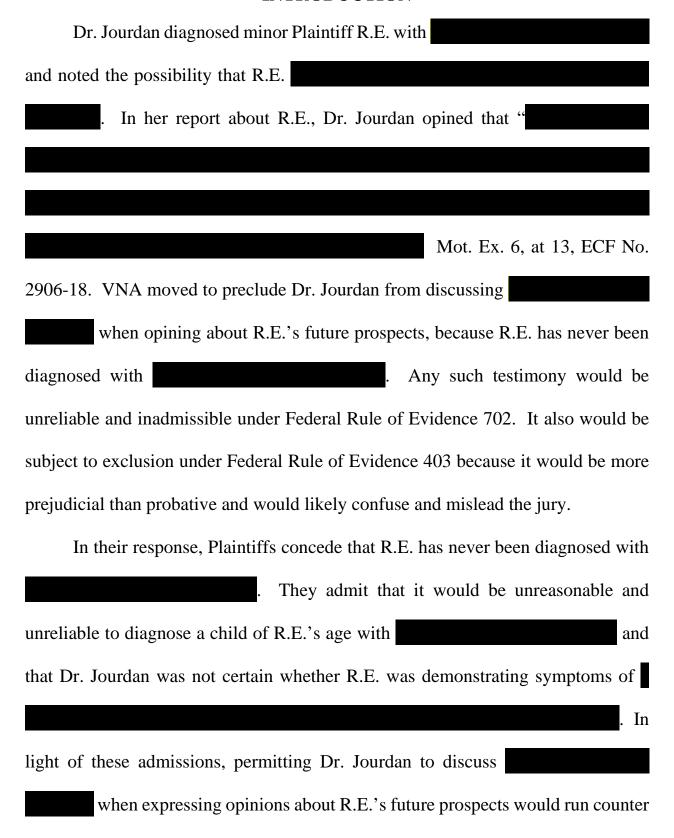
This Document Relates To:

BELLWETHER III

Case No. 5:17-cv-10164-JEL-KGA

REPLY IN SUPPORT OF DEFENDANTS VEOLIA NORTH AMERICA, LLC, VEOLIA NORTH AMERICA, INC., AND VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC'S MOTION TO EXCLUDE CERTAIN OPINIONS OF DR. MIRA JOURDAN

INTRODUCTION



to Federal Rules of Evidence 702 and 403, as well as *Daubert v. Merrell Dow Pharms.*, *Inc.*, 509 U.S. 579 (1993).

Accordingly, the Court should preclude Dr. Jourdan from referring to when opining about R.E.'s future prospects.¹

ARGUMENT

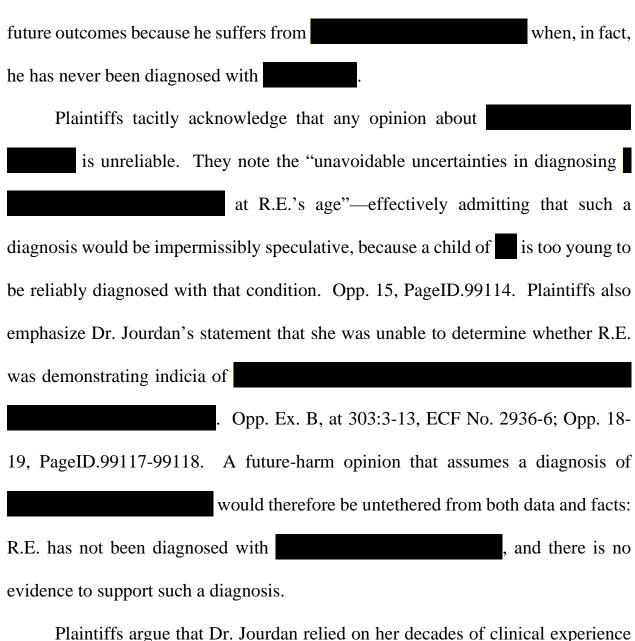
Dr. Jourdan Should Be Precluded From Discussing When Opining About R.E.'s Future Prospects

A. Plaintiffs Have Not Met Their Burden Of Showing That Dr. Jourdan's Future-Harm Opinion About R.E. Involving Is Reliable

VNA's motion is narrowly tailored. VNA seeks only to preclude Dr. Jourdan from discussing when offering opinions about R.E.'s future prospects, because R.E. has not been diagnosed with —a fact that Plaintiffs do not dispute. See, e.g., Opp. 18, ECF No. 2938, PageID.99117. As Plaintiffs acknowledge, Dr. Jourdan's report about R.E. implies that R.E.'s future prospects will be affected if R.E. turns out to have her report states that "Dugbartey,

VNA also argued that Dr. Jourdan's future-harm opinions should be excluded because they are unreliable and are not supported by sufficient facts or data. *See* Br. in Supp. of Mot. (Br.) 7-9, ECF No. 2909, PageID.95918-95920. Plaintiffs do not respond to that argument, so this brief addresses only VNA's argument about R.E.'s prospects if he were later diagnosed with

2000)." Mot. Ex. 6, at 13. That statement implies that R.E. will face unfavorable



and R.E.'s test results in formulating her future-harm opinions, but that misses the point. Opp. 15-16, PageID.99114-99115. The point is that, after considering R.E.'s test results and using her decades of clinical experience, Dr. Jourdan did *not* diagnose R.E. with

permitted to discuss the outcomes of individuals diagnosed with in connection with her opinions about R.E.—a child whom she did *not* diagnose with a

Notably, Plaintiffs point to no case law that permits an inference of future harm based on the possibility that a plaintiff *might* someday be diagnosed with a yet undiagnosed condition. In Plaintiffs' only cited case, two minor plaintiffs *were diagnosed with brain damage*, and their expert argued that, although their school performance had not yet been affected, they would begin to suffer more severe symptoms from the diagnosed condition as they grew older. *Richwind Joint Venture 4 v. Brunson*, 625 A.2d 326, 328, 338-39 (Md. Ct. Spec. App. 1992). This is distinguishable from R.E.'s situation. He has not been diagnosed with a she grows older would be purely speculative.

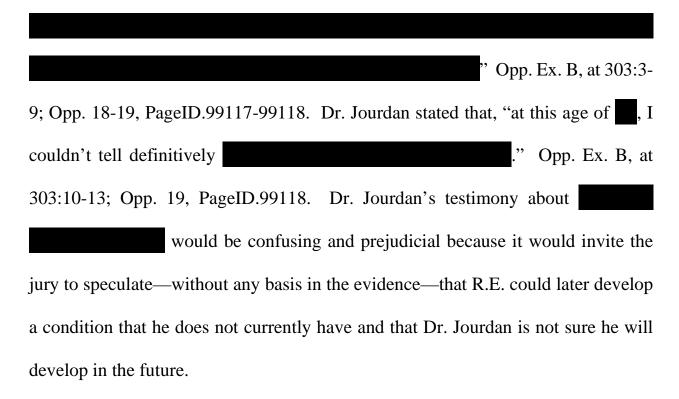
Pluck v. BP Oil Pipeline Co., 640 F.3d 671, 679-80 (6th Cir. 2011) (affirming exclusion of expert's opinion that benzene exposure caused the plaintiff's cancer because the study on which the expert relied did not support his conclusion). Here, the Dugbartey study should be excluded because the study does not support Dr. Jourdan's ultimate conclusion as to R.E., which is that

B. Dr. Jourdan's Testimony About
Would Be Substantially More Prejudicial Than Probative And
Would Confuse The Jury

when opining about R.E.'s future prospects because the probative value of such testimony would be "substantially outweighed by a danger of [] unfair prejudice, confusing the issues, [and] misleading the jury." Fed. R. Evid. 403. Plaintiffs argue that Dr. Jourdan's testimony about how impact future development will educate the jury and will be "highly probative to the jury's injury and damages analysis." Opp. 17, PageID.99116. But that would be so only if the child about whom Dr. Jourdan is opining—R.E.—shares that diagnosis.

Dr. Jourdan also should be precluded from discussing

Further, as Dr. Jourdan explained and Plaintiffs point out, one reason why R.E. "was not diagnosed with a "was that Dr. Jourdan "felt that it was possible that



CONCLUSION

The Court should preclude Dr. Jourdan from discussing when opining about R.E.'s future prospects.

Respectfully submitted,

CAMPBELL, CONROY & O'NEIL P.C.

MAYER BROWN LLP

By: /s/ James M. Campbell
James M. Campbell
Alaina N. Devine
20 City Square, Suite 300
Boston, MA 02129
(617) 241-3000
jmcampbell@campbell-trial-lawyers.com
adevine@campbell-trial-lawyers.com

By: /s/ Michael A. Olsen
Michael A. Olsen
71 S. Wacker Dr.
Chicago, IL 60606
(312) 701-7120
molsen@mayerbrown.com

Attorneys for Veolia North America, LLC, Veolia North America, Inc., and Veolia Water North America Operating Services, LLC

Dated: May 10, 2024

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2024, I electronically filed the foregoing document with the Clerk of the Court using the ECF System, which will send notification to the ECF counsel of record.

Respectfully submitted,

/s/ James M. Campbell_

Dated: May 10, 2024